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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
AT SPOKANE**

STATE OF WASHINGTON, *et al.*,

Plaintiffs,

V.

UNITED STATES DEPARTMENT OF
HOMELAND SECURITY, *et al.*,

Defendants

No. 4:19-cv-5210-RMP

**REPORT PURSUANT TO MAY 13,
2020 ORDER**

1 Defendants respectfully submit this report pursuant to the Court's May 13, 2020
2 Order Denying in Part and Granting in Part Defendants' Motion to Stay Discovery Order
3 re: Privilege Log ("Order"). ECF No. 219. The Court ordered Defendants to produce a
4 privilege log pertaining to Defendants' administrative record on a rolling basis starting
5 on June 12, 2020. *Id.* at 6. The Court further ordered Defendants to make reports to the
6 Court and Plaintiffs every other Friday, on their progress toward completion of the
7 privilege log. *Id.*

8 **Notifying Custodians of Obligation to Preserve Documents**

9 First, the Court ordered Defendants to report on their progress in "notifying
10 potential custodians of their obligation to preserve potentially relevant documents, even
11 if assertedly privileged[.]" Order at 6. As discussed in Defendants' June 12, 2020 report,
12 Defendants have notified all potential custodians of their obligation to preserve
13 potentially relevant documents, even if assertedly privileged.

14 **Segregating Privileged Documents for Review**

15 Second, the Court ordered Defendants to report on their progress in "segregating
16 all assertedly privileged documents for review." Order at 6.

17 In the last report, Defendants reported that USCIS had recently identified
18 additional emails for one custodian that had not previously been collected due to an error
19 in the search used to collect her documents previously. Those additional emails have
20 now been added to the review batches in the Department of Justice review database.
21 Defendants believe they have collected all necessary emails and other electronic
22 documents for the custodians.

1 Although electronic records are expected to constitute the vast majority of
2 documents subject to the Court's Order, it is possible that there could be paper documents
3 that do not also exist in electronic form. At this time, due to the COVID-19 crisis and
4 the telework status of most agency personnel, Defendants cannot determine whether there
5 are any paper documents that will need to be collected, as those documents are physically
6 located in agency offices and are therefore currently inaccessible.

Logging Privileged Documents

8 Third, the Court ordered Defendants to report on their progress in logging
9 privileged documents pursuant to Fed. R. Civ. P. 26(b)(5)(A). Order at 6. As of October
10 16, 2020, 50,152 documents have been batched for review in the DOJ document review
11 platform. 49,526 (*i.e.*, 98.8%) of those documents have undergone an initial review and
12 approximately 8,500 require second level review to make further determinations about
13 whether the records fall within the scope of the Court’s order and to make privilege
14 determinations. The documents awaiting second level review include many documents
15 that contain third party equities and which Defendants expect to include in future
16 installments of the privilege log after consulting with the appropriate third parties. 226
17 documents are currently listed on the privilege log.

Dated: October 16, 2020

Respectfully submitted,

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6 /s/ *Joshua M. Kolsky*
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CERTIFICATE OF SERVICE

I hereby certify that on October 16, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all users receiving ECF notices for this case.

/s/ Joshua Kolsky
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